Supreme Court, U.S.
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No. 07-1371

IN THE

Supreme Court of the United States

BONITA G. HILLIARD, in her capacity as Trustee
Of The H. David and Bonita G. Hilliard Living Trust,
Petitioner,

v.

TIMOTHY E. JACOBS,
Respondent.

On Petition For A Writ Of Certiorari
To The Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

Bonita G. Hilliard, Trustee
The H. David and Bonita G. Hilliard LT
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Pro Se Petitioner

QUESTIONS PRESENTED

The Court of Appeals' published opinion in the instant case has created new law that validates life insurance policies which were (1) acquired and the premiums paid by the party whose life was insured for the undisputed purpose of funding a cross-purchase agreement; and (2) subsequently maintained, absent an insurable interest and over the vehement objections of the insured, by an ex-business partner for the admitted purpose of prospering financially from the untimely death of the insured. Such validation has given rise to the following unanswered questions of law:

1. Whether the Court of Appeals violated:

(a) Article I, Section 10, of the United States Constitution, by impairing the enforcement of the contractual obligations expressly had within the four corners of the cross-purchase agreement for the life insurance policies funding the agreement;

(b) The Fourteenth Amendment, Section 1, of the United States Constitution; and 42 U.S.C.A. § 1982, by taking Petitioner's property,[1] and freely giving it to another;

(c) Article VI, Sections 2 and 3, and the Fourteenth Amendment, Section 1, of the United States Constitution and 42 U.S.C.A. § § 1981 and 1982, by creating new law and public policy which conflict with decisions of this Court, other State courts of last resort, and Indiana courts, on the same critical matters, and that contravene (i) the insurable interest doctrine, common law and

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[1] i.e., The AIG and West Coast life insurance policies H. David Hilliard owned, and transferred to the Trust.

public policy; and (ii) the authority of legislative law; and

(d) The Fourteenth Amendment, Article 1, by denying Petitioner due process as set forth in the last Section III, hereof.

2. If a contractual insurable interest ceases, which was expressly created by a cross-purchase agreement for the express and sole purpose of providing the mandatory funding therein, is the policy rendered invalid, as a prohibited speculative wagering contract on human life for profit, upon the policy's maintenance, over the "living" insured's vehement objections, for the admitted new purpose of prospering financially from the insured's untimely death?

3. When life insurance policies are expressly procured solely to fund a cross-purchase/buy-sell agreement, is the cross-purchase/buy-sell agreement the primary contract, and the contract taking precedence over the insurance companies' contract for the policies, since the agreement gave rise to the policies' procurement pursuant to the terms therein?

4. Whether every competent United States' citizen has the inherent Constitutional right to control who can maintain insurance on his or her *own* life; just as the Federal Patient Self-Determination Act (PSDA) gives every competent citizen the inherent Constitutional right to have life support discontinued on his or her *own* life.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions this Court for a writ of certiorari, and prays for this Court to review the final judgment rendered in this case by the Indiana Court of Appeals.

OPINIONS BELOW

The Indiana Court of Appeals issued a published opinion in the instant case on October 18, 2007, of which a reprint is attached hereto as Appendix E.

On April 29, 2008, the Indiana Supreme Court issued a one page denial of the Petition to Transfer, of which a reprint is attached hereto as Appendix F.

JURISDICTION

The judgment of this case became final upon the Justices of the Indiana Supreme Court voting three (3) to two (2) on April 29, 2008, to deny transfer of the instant case from the Indiana Court of Appeals ("Court of Appeals").

The jurisdiction of this Court rests upon 28 U.S.C. § 1257(a), in relevant part as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

Although a state court's final judgment has been entered in this case, because such an issue of critical and imperative public importance has arisen by the Court of Appeals creating unprecedented new law sanctioning the maintenance of life insurance as speculative wagering contracts on human life for financial gain, Petitioner respectfully requests this Petition be given the same special consideration this Court affords to cases seeking immediate review and determination under Supreme Court Rule 11, while pending in a United States court of appeal, before judgment is entered. *See* 28 U.S.C. § 2101(e).

CONSTITUTIONAL PROVISIONS, FEDERAL RULES OF CIVIL PROCEDURE, AND STATUTORY LAW INVOLVED

The Constitutional provisions and statutory law applicable to this case are as follows:

I. United States Constitutional Provisions:
   - A. Article I, Section 10;
   - B. Article VI, Sections 2 and 3; and
   - C. The Fourteenth Amendment, Section 1.

II. Indiana Constitutional Provisions:
   - A. Article 1, Sections 21 and 24; and
   - B. Article 4, Sections 1 and 27.

III. Statutes:
   - A. 42 U.S.C. § 1981
   - B. 42 U.S.C. § 1982
   - C. Indiana Code § 23-4-1-18(h);
   - D. Indiana Code § 26-1-1-106(1)(2);
   - E. Indiana Code § 26-1-1-203;
   - F. Indiana Code § 27-1-12-17.1;
   - G. Indiana Code § 27-8-1-1;

H. Indiana Code § 27-8-1-6; and
I. Indiana Code § 29-1-2-12.1.

The full citations of the referenced Constitutional provisions are respectively set forth below where applicable in the sections following the "Imperative Reasons Warranting The Court Granting Certiorari."

STATEMENT OF CASE

During the 2004 and 2007 appeals of the instant case, the Court of Appeals, when arriving at its decisions, applied the false statements of material fact made by the Respondent, Timothy E. Jacobs ("Jacobs"), the Defendant below and, thereby, issued two erroneous published opinions in this case. Contrary to the rulings, H. David Hilliard ("David") the original Plaintiff, did *not* sell his business ownership to Jacobs, and Section 6 of the cross-purchase agreement did *not* apply to the sale of the business. The true facts are incontrovertibly affirmed by documentation, and are accurately stated in this Petition, beginning with this statement of the case.

David, and Jacobs (the "Parties") were unrelated and had no acquaintance prior to January 1997. The Parties executed the Amended Operating Agreement for Advanced Marketing Technologies, LLC ("AMT") on March 3, 1997, and became equal 50% members ("Member(s)") and owners of all outstanding shares, assets and units of ownership of AMT (collectively "Units").

In 2001, as a result of AMT's substantial financial growth, David and Jacobs replaced the Parties' 1999 members' cross-purchase agreement and increased the life insurance coverage by executing the 2001 Members' Cross-purchase Agreement ("Purchase

Agreement"). After executing the Purchase Agreement, on April 23, 2001, David acquired a $1,500,000.00 AIG term life insurance policy to add to the $1,000,000.00 West Coast term life insurance policy (collectively "Policies") that David acquired solely to provide funding for the purchase of his Units from his estate under the 1999 cross-purchase agreement.

As affirmed by AMT's financial records and CPA, although, on the Parties' behalf, AMT wrote the checks for the insurance premiums, the payments were entered as a taxable income distribution to the "named" insured. Thus, David paid the premiums for the Policies insuring his life.

As is expressly provided in the Purchase Agreement, and is undisputed, Jacobs was mandated to pay the proceeds of David's Policies to David's estate for the purpose of partially funding Jacobs' mandatory purchase of David's Units, in the event David's death occurred while a Member. The balance Jacobs would have owed David's estate afterward was financed by an escrow agreement the Parties executed concurrently with the Purchase Agreement.

AMT was not a party to the Purchase Agreement, and the insurance companies were granted no rights therein. The AIG and West Coast applications duly noted the purpose of the Policies insuring David's life was to fund the Purchase Agreement, as did the applications for the policies Jacobs acquired to insure his life ("Jacobs' policies").

As a result of a December 2001 dispute, and subsequent discovery of Jacobs' embezzlement of AMT funds, David and Jacobs executed a letter agreement ("Letter Agreement") to dissolve AMT and

be paid for their respective Units from selling AMT's assets to Gazelle Tech Ventures, dba Author Solutions (collectively "Author Solutions"), which was expressly stipulated in number 12 of the Letter Agreement (the "Sale").

Because the Purchase Agreement terminated upon the Sale, pursuant to Section 9(B), and the Parties' respective policies were scheduled to lapse as a result, David and Jacobs contracted through their respective attorneys that Jacobs would transfer David's Policies to David, and David would transfer Jacobs' policies to Jacobs. The Parties further agreed that if not transferred, Jacobs would allow David's Policies to lapse and terminate, as David would do with Jacobs' policies.

On October 16, 2002, during the same closing, from different locations, David and Jacobs respectively consummated the Sale pursuant to number 12 of the Letter Agreement; whereupon, the Parties were individually paid for their respective Units by Author Solutions, AMT concurrently dissolved, and the Purchase Agreement terminated. No debt remained for AMT or between the Parties. Belatedly, on November 15, 2002, Jacobs, as a non-Member, filed AMT's October 16, 2002, dissolution with the Secretary of the State of Indiana.

Following the Sale, Jacobs breached the Purchase Agreement and the Parties' contracts relating to David's Policies, by refusing to facilitate the transfer or allowing David's Policies to lapse and terminate. Upon Jacobs' refusal to accept transfer of his policies, accordingly, David allowed Jacobs' policies to lapse and terminate, and commenced this litigation to attain transfer or termination of David's Policies.

Tragically, shortly after the trial court granted summary judgment to David on April 14, 2004, while on an errand July 22, 2004, David's life was unexpectedly ended suddenly, without illness, from an event of ventricular fibrillation. Since David did not have heart disease and was healthy, the cause has yet to be resolved. Because The H. David and Bonita G. Hilliard Living Trust ("Trust") is the successor in interest to David's estate and owner of the Policies, by transfer from David, the Petitioner was substituted, as the Trustee of the Trust, to continue the litigation of the instant case.

I. Required Titling Of Life Insurance Policies Funding Cross-Purchase Agreements

In accordance with Internal Revenue Code 101(a)(1),[2] when funding cross-purchase/buy-sell agreements with life insurance, the party whose life is insured can only be named as the insured on the face of the policy. Otherwise, taxes will be assessed on the policy's proceeds, and reduce the funds available for the surviving partner to pay the deceased partner's estate the purchase price for the deceased's partner's business ownership. The named insured, therefore, relies upon the cross-purchase/ buy-sell agreement to contractually effect the change of beneficiary on the policy's face to the named insured's estate, by the agreement mandating the policy's proceeds be paid to the deceased partner's estate.

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[2] www.irs.gov/irb/2007-11_IRB/ar05.html; "Section 101(a)(1) provides that, gross income does not include amounts received under a life insurance contract if such amounts are received by reason of the death of the insured."

Thus, David could only be named as the insured on the face of his Policies, and relied upon the mandatory provisions in Section I on page one of the Purchase Agreement to expressly effectuate the change of beneficiary to his estate.

II. The Federal Issues Arising From The State Court's Decision

Pursuant to United States Supreme Court Rule 14(1)(g)(i), an outline of the federal questions sought to be reviewed and the method and manner in raising the questions is included in Appendix A.

IMPERATIVE REASONS WARRANTING THE COURT GRANTING CERTIORARI

The gravely dangerous public policy arising from the new law created by the Court of Appeals' published opinion in the instant case has never before been brought before this Court, and is one of the most reprehensible public policy concerns to ever reach this Court. As never before has a court validated a life insurance policy absent an insurable interest and over the "living" insured's vehement objections.

In contravention of the United States and Indiana Constitutions, statutory and civil rights law, the insurable interest doctrine, and centuries of public policy and common law, the new law created by the Court of Appeals' judgment has set unprecedented detrimental and dangerous public policy in sanctioning the maintenance of life insurance as speculative wagering contracts on human life for financial gain. In rewarding a historic $2,500,000.00, plus statutory interest, to the perpetrator of such abhorrent practice, the Court of Appeals has opened

the once securely closed floodgates for "the unscrupulous [to be] free to bet on what life they choose." *A. H. Grigsby v. R. L. Russell*, 222 U.S. 149 (1911)

It is critical for the safety of each citizen of this country, whose life is or may become insured, for the powers of this Court to re-close those gates, and set a precedent leaving no doubt that it is the person upon whose *life* the policy is written who takes precedence, and not the "*unscrupulous*" whose only interest is in celebrating a financial gain from a tragic untimely loss of another's life.

I. The Court of Appeals' Misapplication Of This Court's Ruling In *Connecticut Mutual Life Insurance Company v. Schaefer*, 94 U.S. 457 (1876), Has Rendered A Decision Creating Such Unprecedented Detrimental New Law And Public Policy, As To Call For An Urgent Exercise Of This Court's Supervisory Powers

The Court of Appeals, when arriving at its decision in this case, applied case law involving insurance policies on the lives of a "*deceased*" divorcée who had a new wife and a "deceased divorcée who had remarried an ex-wife, when the case before the court involved life insurance policies expressly funding a cross-purchase agreement between two "*living*" unrelated ex-businessmen, who were solely funding a business ownership for the protection of their respective estates.

The Court of Appeals then misinterpreted the intention of a "general rule" referred to in *Farra v. Braman*, 171 Ind. 529, 86 N.E. 843 (1909), which

cited as authority this Court's ruling in *Connecticut Mutual Life Insurance Co. v. Schaefer*, 94 U.S. 457 (1876). Such "rule" was mistaken by the lower court to hold that in all instances an insurable interest is only required at the inception of a life insurance policy, regardless of the fact situation of each case. A review of the *Farra* ruling, however, makes it clear that such a broad generality was not intended. Instead, the *Farra* court distinguished that the applicability of the "general rule" was for cases involving wives of a "*deceased*" insured, by stating that "[i]n each of these cases the wife of the assured person had been appointed by him as his beneficiary." *Id.* 850. The following brief recap of *Farra*, and *Schaefer, supra*, clearly show that neither is on point with the instant case.

The question in *Farra, supra*, a 1909 Indiana case, was which of the two former wives, Ada A. Farra and Eva J. Braman, of the "*deceased*" insured, John F. Ried, should be paid a *"$500.00"* death benefit from the Voluntary Relief Department of the Pennsylvania Lines West of Pittsburgh. *Ibid* at 844. Ada was John's surviving widow, and then remarried after his death. *Id.* The court ultimately held that based upon the Voluntary Relief Department's rules, by-laws, and regulations governing the policy, Eva's divorce from John deprived her of "any right to participate in said fund as beneficiary . . .," *Id.* 845, and due to the "conjugal relations existing" between Ada and John "when he designated her as beneficiary, prior to the maturity of the policy," Ada should receive the insurance money. *Id.* at 849.

Schaefer, supra, was an Ohio case involving a "*deceased*" insured, George Schaefer, and his wife, Franzisca Schaefer. In 1868, George and Franzisca

obtained one insurance policy to jointly insure their lives. The Schaefers were *both* listed as owners of the policy, and the proceeds were payable to whoever survived the other. *Ibid* at 457. The Schaefers divorced in 1870, but then remarried one another. *Id.* A year later, in 1871, George died. *Id.* When Connecticut Life would not honor the policy upon Franzisca filing a claim, she filed suit. *Id.* Connecticut Life argued that as a consequence of the Schaefers' divorce in 1870, Franzisca's insurable interest in George's life terminated. *Id.* at 459. This Court held that the Schaefers' policy "in our opinion, [must] be sustained as a joint insurance, *without reference to any other interest . . .*" *Id.* at 461. (Emphasis supplied.) Notably, a significant point in *Schaefer,* which eluded the Court of Appeals, is that because the Schaefers remarried *each other,* Franzisca clearly had an insurable interest in George's life before and at the time of his death.

Unquestionably, the facts in *Schaefer* and *Farra, supra,* are distinguishable from the facts in the present case. Here, the insurable interest only existed because it was contractually created by the Purchase Agreement solely for the express purpose provided within its four corners. Given Jacobs' admission to speculating on the early end of David's life to prosper financially, the *other* "general rule" this Court referenced in *Schaefer* is the one on all fours with this case, as follows:

> "It is generally agreed that mere wager policies-that is, policies in which the insured[3] party has no interest whatever in the matter

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[3] The use of word "insured" in this imported quote is a reference to the holder of the policy, not the party whose life is insured.

> insured, but only an interest in its loss or destruction-are void, as against public policy." *Id.* 460.

The Court of Appeals readily accepted the court in *Farra, ibid*, relying upon the controlling authority of the Voluntary Relief Department's "governing rules, by-laws, and regulations" to decide which of John Ried's former wives should receive the "*$500.00*" proceeds from the policy at issue. In the present case, curiously, the Court of Appeals ignored the Purchase Agreement expressly establishing David's Policies as his property, and his estate as the sole beneficiary.

As *Schaefer* and *Farra* evidence, the validity of each policy, and whether the insured consented to the policy's continuance were never at issue.

II. For The First Time, A Court In This Country Has Knowingly Created New Law Sanctioning Speculative Wagering Contracts On Human Life For Profit

The unprecedented new law the Court of Appeals' judgment creates conflicts with decisions of this Court, other State courts of last resort, and jurisdictions, as well as Indiana courts, on the same critical matters, and so contravenes the United States and Indiana Constitutions, civil rights and statutory law, the insurable interest doctrine, centuries of common law and public policy, contract and property rights law, as to urgently call for an imperative exercise of this Court's supervisory powers.

A. The New Law Created By The Indiana Court of Appeals' Decision Sets Unprecedented Detrimental Public Policy, And Violates Each United States Citizens Inherent Constitutional Right To Control Matters Affecting His Or Her Life

"Both policies were ten year level premium policies, meaning that regardless of the changing risk the premium in the first year of the policy is the same as in the tenth year. After the tenth year the premiums were set to increase to hundreds of thousands of dollars per year. As a result of this structure, over the first ten yeas of the policy the policy cost in relation to risk declines yearly. I was aware of this fact and the fact that David did not seem healthy to me. It seemed financially imprudent for me to abandon the policies under these circumstances." *Jacobs' 2006 Affidavit; No. 20.*

". . . retaining two life insurance policies on the life of a former business partner who is in his late sixties and was classified as a substandard risk is a reasonable decision from an investment standpoint." *Jacobs' Appellant Brief, 2004, P. 28, Second Paragraph.*

Jacobs' unsettling words leave no doubt that he converted David's Policies into speculative wagering contracts in anticipation that David's life would end prematurely and reap a windfall.

For centuries, courts throughout the United States have abhorred the practice in which Jacobs

has engaged. The Court of Appeals, on the other hand, in an *ad hoc* manner, created new law upholding Jacobs' rapacious quest to prosper financially from David's premature death. Then, the court rewarded Jacobs' offensive behavior with a historic $2,500,000.00 windfall, plus statutory interest.

For the first time, in a country where the value of human life has been esteemed as immeasurable, a court has created law diminishing human life to a mere commodity, in which its early end can now be an acceptable means of investing to financially prosper, without even the slightest pretense of having any interest in that life, let alone an insurable one. And regardless whether the insured adamantly objects. In the process, the Court of Appeals has set a far-reaching precedent with a dangerous public policy, and that violates every competent United States' citizen's inherent Constitutional right to control matters directly affecting his or her *own* life.

The creation of any law that sets in motion a gravely consequential public policy contradicts the inherent rights afforded to every citizen by our United States Constitution. Section 1 of the Fourteenth Amendment to the United States Constitution, expressly provides in pertinent part that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." The definition of "privileges and immunities" was first spelled out by Associate Justice Bushrod Washington in 1823, to mean the "protection by the government, with the right to acquire and possess property of every kind, and to

pursue and obtain happiness and *safety*. . ."[4] (Emphasis supplied.)

Such safety and public policy concerns have lead courts to prohibit the continuation of an insurance policy when maintained against the wishes of an insured in *Ramey v. Carolina Life Insurance Co.*, 244 S.C. 16, 135 S.E.2d 362 (1964),*In re: The Marriage of Day,* 31 Kan. App. 2d746, 74 P.3d 46, 53 (2003); *Watson v. Massachusetts Mutual Life Insurance Co.*, 140 F.2d 673 (D.C.Cir. 1994); cert. denied, 322 U.S. 746; and *Metropolitan Life Insurance v. Monohan*, 102 Ky. 13, 42 S.W.924 (1897).

The critical importance of courts requiring a continual insurable interest is underscored by the following sound reasoning of the Supreme Court of Texas:

> "The want of insurable interest is just as absolute where it has ceased as where it never existed, and the inducement to destroy the life insured for gain in [*sic*] just as strong in the one case as in the other." *Cheeves v. Anders*, 87 Tex. 287, 28 S.W. 274 (1894),

Indeed, regardless of whether an insurable interest existed at the inception of a life insurance policy, once the only interest of the person maintaining the policy becomes an interest in collecting the proceeds from the insured's untimely death, then the policy has become an illegal speculative wagering contract on human life for profit. This Court has consistently agreed, by holding

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[4] http://legal-dictionary.thefreedictionary.com/Privileges+and+Immunities

that a continual insurable interest is a necessary requirement in safeguarding human life, as follows:

> "But if there be any sound reason for holding a policy invalid when taken out by a party who has no interest in the life of the assured, it is difficult to see why that reason is not as cogent and operative against a party taking an assignment of a policy upon the life of a person in which he has no interest. The same ground which invalidates the one should invalidate the other-so far, at least, as to restrict the right of the assignee to the sums actually advanced by him. In the conflict of decisions on this subject we are free to follow thone [*sic*] which seem more fully in accord with the general policy of the law against speculative contracts upon human life." *Warnock v. Davis*, 4 Ky.L.Rptr. 67, 1881 WL 19922 (U.S. 1881).

Such a universally accepted rule to not permit speculative contracts upon human life, and all of the many decisions which have firmly established its precepts to the point of incontestability, are grounded upon considerations of strong public policy, as this Court re-emphasized in *A. H. Grigsby v. R. L. Russell*, 222 U.S. 149 (1911), as follows:

> "A contract of insurance upon a life in which the insured[5] has no interest is a pure wager that gives the insured a sinister counter interest in having the life come to an end. And although that counter interest always exists...the chance that in some cases it may prove a sufficient motive for crime is greatly

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[5] "Insured" is referencing the holder of the policy.

> enhanced if the whole world of the unscrupulous are free to bet on what life they choose. The very meaning of an insurable interest is an interest in having the life continue, and so one that is opposed to crime. And what, perhaps, is more important, the existence of such an interest makes a roughly selected class of persons who, by their general relations with the person whose life is insured, are less likely than criminals at large to attempt to compass his death." *A. H. Grigsby v. R. L. Russell*, 222 U.S. 149 (1911)

The expectation of financial gain from another's death being an inducement to hasten the end of a life, in which there is no interest, is elaborated further in the following holding of the Supreme Court of Texas:

> "It is against the public policy of this state to allow any one who has no insurable interest to be the owner of a policy of insurance upon the life of a human being. *Price v. Supreme Lodge, Knights of Honor*, 68 Tex. 361, 4 S.W. 633 (Tex. 1887); *Schonfield v. Turner*, 75 Tex. 324, 12 S.W. 626 (Tex. 1889); *Equitable Life Assur. Soc. v. Hazlewood*, 75 Tex. 338, 12 S.W. 621 (Tex. 1889). In some states it is held that an element of wagering likewise enters into such contracts, which has led, as we believe, to inconsistencies in the decisions in some of the courts. Our court has placed the innibition [*sic*] against such contracts upon the higher and sounder ground that the public, independent of the consent or concurrence of the parties, has an interest that no

> inducement shall be offered to one man to take the life of another." *Cheeves v. Anders*, 87 Tex. 287, 28 S.W. 274 (1894),

Courts have a "duty to not recognize or enforce contracts resting upon an illegal consideration. An illegal consideration causes the whole promise to fail and the contract is void. In other words, a contract that rests on illegal consideration is itself illegal." American Jurisprudence on Contracts § 224.

The Supreme Court of Pennsylvania agrees in holding that "[c]ontract language is not controlling if it is contrary to a clearly expressed public policy."[6] *Progressive Northern Ins. Co. v. Schneck*, 572 Pa. 216, 813 A.2d 828 (2002).

In addition, "[t]he majority of courts to have considered the question [of insurable interest] have ruled that the public policy underlying the requirement of an insurable interest outweighs that behind the incontestability clause, often reaching that result by holding the insurance policy to have been void *ab initio;* and have thus denied recovery to the owner/beneficiary based on the absence of an insurable interest." Williston on Contracts § 17:5.

"Federal courts will refuse to enforce contracts where the public policy is reflected in applicable legal precedents; in other words, the federal courts, as a matter of contract law, will not enforce an agreement if the agreement would require violation of established public policy norms, even if enforcing the

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[6] *See* also: *Post v. Bregman*, 349 Md. 142, 707 A.2d 806 (1998); and *Peterman v. State Farm Mut. Auto. Ins. Co.*, 961 P.2d 487 (Colo. 1998)

agreement would not violate a specific federal statute, treaty, or constitutional requirement." *Fomby-Denson v. Dept. of Army,* 247 F.3d 1366 (Fed. CIR. 2001).

Without a doubt, AIG's and West Coast's contracts for David's Policies were unenforceable as illegal wagering contracts upon Jacobs' first advisement to the trial court that, absent an insurable and over David's vehement objections, he continued David's Policies for the sole purpose of realizing a profit from David's untimely death, because "*David did not seem healthy*" to him, and it was *"a reasonable decision from an investment standpoint."*

The Supreme Court of Pennsylvania further addressed how having an insurable interest affects the sustainability of the insurance company's contract for the policy; reasoning in relevant part that ". . . to sustain such a contract it must appear that there is a real concern in the life of the insured whose death would be the cause of substantial loss to the beneficiary. . ." *United Security Life Ins. & Trust Co. of Pennsylvania v. Brown,* 270 Pa. 264, 113 A. 443 (Pa. 1921).

Obviously, by Jacobs' own words, Jacobs' only "real concern" was in David living longer than he speculated, and causing him to not realize the $2,500,000.00 return on the "investment" that Jacobs hoped to reap from David's death occurring sooner rather than later.

On April 10, 2008, the Governor of the State of Indiana, Mitch Daniels, signed House Enrolled Act

1379 into law to ban STOLIs life insurance policies[7] from being sold in Indiana, since such policies are purchased in the anticipation of prospering financially from the insured's untimely death. Senator Ed. Charbonneau was quoted as saying "Life insurance policies are used to help families cope financially following the death of a loved one and helps businesses deal with the loss of an owner or employee," and "[l]ife insurance is not to be used by investors of STOLIs who wager on human life and profit from the death of the insured."[8]-[9]

Indiana Code § 27-8-1-6 requires either an insurable interest or the insured's consent in the maintenance of life insurance, for which a precedent was set in *In re the Estate of Dora W. Powers v. John F. Powers*, 829 N.E.2d 1212, 1217 (Ind.App. 2006). In *Powers*, the Court of Appeals emphasized the mandatory governing effect of Indiana Code § 27-8-1-6, when citing public policy forbidding wagering contracts on human life, as follows:

> "Accordingly, a policy or certificate issued by an insurance company or association is not valid when payments are made by any person other than the insured without the written consent of the insured, unless the policy is supported by an insurable interest. I.C. 27-8-1-6." *Id.*

The policies at issue in *Powers* were maintained by the son, John, of the insured, Dora Powers, with her

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[7] Stranger-originated life insurance policies.

[8] *See* Appendix I.

[9] www.in.gov/legislative/senate_republicans/homepages/s5/4-21-08.html

consent. *Id.* at 1219. The court also ruled John had an insurable interest in his mother's life. *Id.*

Because Jacobs began paying the premiums for David's Policies following AMT's asset sale and dissolution without having either an insurable interest or David's consent, Indiana Code § 27-8-1-6 is, in and of itself, dispositive in rendering David's Policies invalid upon Jacobs' first premium payment.

Indiana Code § 27-8-1-6 is a straightforward statute with readily understandable terms which require no interpretation. The Supreme Court of Illinois held in relevant part that ". . . the best method for ascertaining legislative intent is to analyze the plain language of the statute itself. Where the legislative intent can be ascertained in this manner, that intent must prevail and be given effect without resorting to other interpretive aids." *Barnett,* 171 Ill.2d at 388-89, 216 Ill.Dec. 550, 665 N.E.2d 808. *Epstein v. Chicago Bd. of Educ.*, 687 N.E.2d 1042 (Ill.,1997).

Despite the dispositive applicability of Indiana Code § 27-8-1-6 to this case, the Court of Appeals' decision created a dangerous new law in violation of Article 4, Section 1, of the Constitution of the State of Indiana, which expressly provides in relevant part that ". . . every law shall be . . . enacted by the General Assembly of the State of Indiana;" and "no law shall be enacted, except by bill."

The Court of Appeals' judgment conflicts with this Court, other State courts of last resort, as well as Indiana courts and legislature, on the same critical matters, and so contravenes the Constitutions of the United States and Indiana, civil rights, and centuries of common law and public policy, as to critically call

for an imperative exercise of this Court's supervisory powers.

B. The Court of Appeals' Decision Creating New Law Impairing The Obligations of Contracts Violates Statutory Law And The United States And Indiana Constitutions

Article I, Section 10, and the Fourteenth Amendment, Section 1, of the United States Constitution expressly provides in respective relevant part that "[n]o State shall enter into any . . . law impairing the obligation of contracts . . .;" and "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

The Constitution of the State of Indiana, Article 1, Bill of Rights, Section 24, expressly provides that "no ex post facto laws, or law impairing the obligation of contracts, shall ever be passed."

In contravention of the United States and Indiana Constitutions, public policy, statutory and contract law, and in conflict with prior decisions of this Court, other State courts of last resort and Indiana courts, on the same critical matters, the Court of Appeals' judgment created new law impairing the undisputed contractual obligations had in the Cross-Purchase Agreement ("Purchase Agreement") of the instant case.

Courts consistently hold "that when the terms of a written contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving a practical interpretation to the language employed and the

parties' reasonable expectations." *Macrae v. Dolce,* 249, A.D.2d, 476, 671, N.Y.S.2d, 530 (N.Y.A.D. 2 Dept.,1998)

No searching or interpretation is necessary in this case, as the Parties' intent and the purpose of David's Policies are expressly stipulated up-front on page one, paragraph four, of the Purchase Agreement as follows:

> "WHEREAS, it is the Members' purpose to provide for the purchase by the remaining Member(s) of a deceased or disabled Member's units, and to provide the funds necessary to finance such purchase."

The Parties further established the undisputed express purpose of David's Policies by (a) purchasing "term" policies, which have *no* cash value and that pay only in the event of death, not a disability; (b) duly noting on the insurance applications that David's Policies were for funding the Purchase Agreement; and (c) concurrently executing the Escrow Agreement together with the Purchase Agreement to finance the balance remaining, and to hold David's Units in trust until Jacobs had fully paid David's estate the purchase price, and vice versa with respect to Jacobs and his Units.

The Parties affirmed David's estate as the sole beneficiary of his Policies by expressly mandating on page one in Section I as follows:

> "Upon the death of a Member the surviving Member shall purchase and the personal representative of the deceased Member shall sell to the surviving Member all of the units

> owned by the deceased Member in AMT at the time of his death . . . "

There is no provision in the Purchase Agreement, or any agreement, permitting Jacobs to maintain David's Policies in force outside the four corners of the agreement, or for the Policies' proceeds to be paid to anyone or entity other than David's estate.

Furthermore, by the operative language of the Purchase Agreement expressly stating "*Members*," the letter of the agreement restricted the viability of David's Policies to the time period the Parties were "*Members*;" and, thereby, the insurable interest afforded therein was contractually required to exist *at the time of loss*.

The fact that the entire "*membership*" agreement and the sole purpose of David's Policies are embodied within the four corners of the Purchase Agreement is expressly affirmed in the last paragraph, above David's and Jacobs' signatures, titled "Section 15, Entire Agreement," as follows:

> "This agreement together with an Escrow Agreement concurrently signed by the Members constitutes the entire agreement between the Members concerning the subject matter of this agreement and all prior oral or written agreements made by the Members relating to the purchase and sale of the Members' Units upon their death or disability are merged herein . . ."

Because, pursuant to number 12 of the Letter Agreement, no "*Members*" were left remaining upon AMT's October 16, 2002, concurrent asset sale and dissolution, David's Policies became null and void,

pursuant to Section 9(B), upon the termination of the Purchase Agreement; unless transferred to David.

The courts below were aware of David's vehement objections to Jacobs unilaterally changing the express purpose of David's Policies' to maintain the Policies in force for Jacobs' admitted new purpose of wagering on David's life ending prematurely to prosper financially, and that David lived in fear for his life as a result.[10]

Indiana Code § 23-4-1-18(h)[11] expressly requires that "[a]ny difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; *but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.*" (Emphasis supplied.) The Court of Appeals' judgment impaired the contractual obligations Jacobs had in the Purchase Agreement to not maintain David's Policies in force for any purpose other than expressly provided therein, by the court not enforcing the letter of the bargain the Parties made within the agreement's four corners.

The logic of the Court of Appeals' decision defies the essential reason a person enters into a cross-purchase agreement. For the fact that David only *permitted* the insurable interest to be *created* by the Purchase agreement solely for the express purpose of Jacobs paying the proceeds to David's estate to fund Jacobs' mandatory purchase of David's Units, the maintenance of David's Policies was restricted to

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[10] *See* Appendix H.

[11] Formerly: Acts 1949, c.114, s.18.) As amended by P.L.230-1995, SEC.5.

that express purpose solely for the time period such purchase was viable. Moreover, had David never owned Units, David's Policies would never have existed; hence, the insurable interest created by the Purchase Agreement was in the Units David owned, *not* his life. Each Party was paid for his Units upon AMT's asset sale and dissolution; thereby, leaving nothing remaining to insure.

In *Miller v. Hall,* 65 Cal.App.2d 200, 150 P.2d 287 Cal.App. 4 Dist. 1944. Merrill T. Miller ("Miller"), and another, brought action against G. Wesley Hall ("Hall"). The case involved an agreement in which Miller and Hall had insured their lives with whole life insurance policies, for the proceeds to be paid to the widow of a deceased partner. The partnership paid the insurance policies' premiums, and the policies became a partnership asset. Miller alleged the agreement did not apply, since the partnership dissolved as a result of Hall's paralytic stroke. In summary, the court held as follows:

> "[T]he contract between the partners made no express provision for the disposition of the four policies of life insurance in case of a dissolution; that it was the intent and purpose of the parties that said policies should be carried for the mutual protection of the partners and their families; that it was not intended that either partner should retain insurance upon the life of the other, but that ultimately the proceeds of said policies should go to the family of each insured, respectively; that said policies are and in equity should be the property in each instance of the partner upon whose life they are written, respectively,

and of his wife . . ." *Id.*.

In Melrose v. Capitol City Motor Lodge, Inc., 705 N.E.2d 985 (Ind.Ct.App., 1998), the Court of Appeals relied upon the foregoing holding from *Miller, supra,* in ruling upon *Melrose, ibid.*

Another Indiana precedent, which is directly on point is *Shriner v. Sheehan,* 773 N.E.2d 833 (Ind.App. 2002). Edward Shriner was terminated from a company he owned with Thomas Sheehan. Shriner sought additional compensation for his ownership shares and to retain the life insurance policy the company had purchased on Sheehan's life in Shriner's name,[12] pursuant to cross-purchase and redemption agreements. The Court of Appeals affirmed the trial court's ruling in ordering Shriner to surrender the whole life insurance policy because "Shriner no longer has any reason to have the insurance on Sheehan's life," *Id.* at 849, and "Shriner no longer had a valid purpose for having an interest in the life or death of Sheehan." *Id.*

In *Cheeves v. Anders,* 87 Tex. 287, 28 S.W. 274 (1894), the Supreme Court of Texas held as follows:

> "We cannot disregard the sound principles established by our courts, and follow another line of decisions, however eminent the courts or numerous the cases. We therefore hold that in this case the interest which Cheeves may have had in the policy as partner, aside from

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[12] In the instant case, the Policies were term, not whole life. As affirmed by AMT's financial records and CPA, David purchased the Policies and paid the premiums; not AMT or Jacobs.

> his interest which was joint with Chilton, and therefore belonged to partnership, ceased at the dissolution of the firm, and will not sustain his claim to the proceeds of this policy." *Ibid.*

The fact that the Court of Appeals' decision in this case departs from and conflicts with other numerous cases, each of which involved the same critically important matters, is supported by the lower court's own survey in *Melrose*, *supra*, of appellate decisions addressing the appropriate disposition of life insurance policies held by business entities upon dissolution, in which the lower court found that "[w]hen the corporation's need for the insurance ceases, making it available to the shareholders for its cash surrender value, at least where there is full information and adherence to corporate formalities, is imminently fair and reasonable." *Id.* at 994.[13]

In *Ruth v. Flynn*, 26 Colo. App. 171, 142 P. 194 (1914), the court concluded that "the interest in a policy upon one member of a partnership held by the firm ceased upon the dissolution of such firm, and the survivor has no interest in the recovery," 142 P. 198, citing with approval *Cheeves*, *supra*, and *Bank of Macon v. Loh*, 104 Ga. 446, 31 S.E. 459 (1898), which condemned as illegal wagering contracts life insurance arrangements between creditors and debtors; wherein the policy proceeds substantially exceed the amount of the debt.[14]

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[13] The Policies were "term," with no cash value, and David purchased the Policies and paid the premiums.

[14] David and Jacobs were respectively paid for their Units from the Sale proceeds by Author Solutions, and no debt existed.

Indiana Code § 26-1-1-203 expressly provides "[e]very contract or duty within IC 26-1 imposes an obligation of good faith in its performance or enforcement. Title 42 U.S.C. § 1981(a)(b)(c) provide in relevant part:

(a) "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . .;"

(b) "For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship;" and

(c) "The rights protected by this section are protected against impairment . . . under color of State law."

Article VI, Sections 2 and 3, of the United States Constitution expressly provide respectively in relevant part that "[t]his Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby. . .;" and . . . "judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution . . ."

By the Court of Appeals holding that Jacobs was only required to have an insurable interest at the inception of David's Policies, the court imposed upon David an entirely different type of insurable interest for Jacobs than David or even Jacobs imposed upon

one another within the four corners of the Purchase Agreement.

The court below changing the express terms of the Purchase Agreement is contrary to this Court's holding in *Imperial Fire Ins. Co. of London v. Coos County*, 151 U.S. 452, 14 S.Ct. 379 (U.S. 1894), wherein this Court stated "[t]he courts may not make a contract for the parties. Their function and duty consist simply in enforcing and carrying out the one actually made."

The Supreme Court of Washington held "[i]n *Collins v. Northwest Casualty Co.* 180 Wash. 347, 39 P.2d 986 (Wash. 1935) A.L.R. 1235," that it is ". . . not permitted, upon general considerations of abstract justice, or in the application of the rule of liberal construction, to make a contract for the parties that they did not make themselves, or to impose upon one party to a contract an obligation not assumed.'" *Chaffee v. Chaffee*, 19 Wash.2d 607, 145 P.2d 244 (1943).[15]

While Indiana Code § 26-1-1-106(1), expressly provides "[t]he remedies provided by IC 26-1 shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed. . .," the Court of Appeals' decision created new law impairing the contractual obligations David and Jacobs had in Purchase Agreements. Then, the lower court imposed upon David a contract he did not make, and denied David the benefit of the bargain he made. Such non-enforcement and impairment contravenes the United

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[15] To the same effect, *see Hays v. Bashor*, 108 Wash. 491, 185 P. 814 (Wash. 1919) and *Johnson v. McGilchrist*, 174 Wash. 178, 24 P.2d 607 (Wash. 1933).

States Constitution, the Constitution of Indiana, statutory and civil rights law, and so conflicts with this Court, and other State courts of last resort, as well as Indiana courts, on the same serious matter, as to critically call for an imperative exercise of this Court's supervisory powers.

C. New Law Created By The Court of Appeals' Decision Violates United States' Citizens' Inherent Property Rights

The Fourteenth Amendment, Section 1, to the United States Constitution expressly provides in relevant part that "No state shall . . . deprive any person of . . . property, without due process of law.

Title 42 U.S.C. § 1982 expressly provides in relevant part that "[a] citizens of the United States shall have the same right, in every State and Territory . . . to inherit, purchase, lease, sell, hold, and convey real and personal property."

Article 1, Section 21, of the Constitution of the State of Indiana expressly provides in relevant part that ". . . [n]o person's property shall be taken by law, without just compensation . . ."

In *Elliott v. Metropolitan Life Insurance Co.*, 116 Ind.App. 404, 64 N.E.2d 911 (1946), the Court of Appeals held that "[i]t is well settled in Indiana that a policy of insurance is a chose in action with which the *insured* can do with or dispose of, as he pleases, in the absence of prohibitory legislation or contract stipulations. *The policy has all of the characteristics of personal property and can be delivered and transferred as other personal property.*" (Emphasis supplied.)

There is no "prohibitory legislation" diminishing David's ownership of his Policies. To the contrary, as set forth in the prior section, Jacobs could not maintain the policies pursuant to Indiana Code § 27-8-1-6, without either an insurable interest or David's consent. And, although, for tax purposes, David could only be named the insured on the face of the Policies, the express mandatory "contract stipulations" in the Purchase Agreement establish David as the owner of the Policies and his estate as the sole beneficiary.

Furthermore, "many jurisdictions have adopted the view that, rightful ownership will be determined based on the surrounding circumstances, including such factors as the purpose, acquisition, payment of premiums, control and maintenance of a policy, not a rigid determination based solely on who is listed as "owner" on the face of the policy." *See* 56 A.L.R.3d 892 (2003).

The word 'rights' as applied to property in a contract in *Bailey v. Miller*, 91 N.E. 24 (Ind.Ct.App. 1910), is defined as "[a] right is a claim or title to or interest in anything whatsoever that is enforcible [sic] by law. The word 'rights,' as applied to property in a contract, refers to the right to the free use, enjoyment and disposal of it. It also means the possession of the full and complete title, and of all remedies relating thereto." [153 Ind. App. 381] (Citing authorities.)

The predominant view in Hohfeldian Paradigm of Legal Rights and Duties is a dominant approach to property rights and duties that has a long history in American jurisprudence and judicial practice in determining property rights. State and federal case

law are replete with references to Hohfeld's jural relations.

The Hohfeldian scheme of jural relations has been expressly adopted by the American Law Institute's highly influential *Restatement of the Law of Property* (1936) (see Munzer 1990, p. 20). Section 1 of the Restatement defines "right" as "a legally enforceable claim of one person against another."

Just as Jacobs could not acquire an insurance policy on the life of a stranger, neither could nor did Jacobs acquire an insurance policy on David's life. David acquired the Policies by completing the applications, subjecting to and passing the physical examinations, and, as affirmed by AMT's financial records and CPA, David paid the Policies' premiums. Thus, the Policies were David's property.

As earlier detailed in the "Statement Of Case," in accordance with Internal Revenue Code 101(a)(1),[16] when funding cross-purchase/buy-sell agreements with life insurance, the party whose life is insured can only be named as the insured on the face of the policy. Otherwise, taxes will be assessed on the policy's proceeds.

A case on point is *State Farm Life Ins. Co. v. Fort Wayne Nat. Bank*, 474 N.E.2d 524 (Ind.Ct.App. 1985). The question presented to the trial court in *State Farm, ibid*, was whether State Farm and its agent, Robert Houser, failed to properly effect insurance on the life of its insured, James Zimmerman. As in this case, the policy funded a buy-sell agreement for the undisputed purpose of James' son, Steven, purchasing James' stock from his

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[16] www.irs.gov/irb/2007-11_IRB/ar05.html

estate. *Id.* at 526. On April 1, 1980, James died. Because James was named the owner of the policy, the proceeds passed through his estate causing a $34,373.97 tax consequence. *Id.* On appeal, the Court of Appeals affirmed the trial court's judgment ordering State Farm and Houser to pay James' estate the $34,373.97 tax deficit, *Id.*, because each were negligent by knowing the policy's purpose, and failed to advise James that Steven had to be named the owner of the policy to prevent a tax assessment on the proceeds. *Id.* at 528. Thus, Jacobs' only relationship to David's Policies was to pay the proceeds to David's estate while not incurring any tax consequence.

By Hohfeldian's and the Restatement's definition of property rights, because Jacobs was expressly mandated by the Purchase Agreement to pay the proceeds of David's Policies' to David's estate to finance Jacobs' purchase of David's Units, Jacobs only had "*mere use*" of the Policies for this undisputed express purpose.

The Court of Appeals' judgment creating new law that takes property from the rightful owner and gives it to another, who had only a contractual "*mere use*" of the property for a specific purpose and time period, and a person who did not aquire or pay for the such property, violates the property rights guaranted to citizens of the United States. The lower court's unsupported taking of David's and the Trust's property urgently calls for an imperative exercise of this Court's supervisory powers to repair the irreparable harm suffered as a result.

III. The Violations Of Due Process In The Instant Case Have Caused Such Irreparable Harm As To Call For An Imperative Exercise Of This Court's Supervisory Powers

> "In 1934, the United States Supreme Court held that due process is violated "if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934)

On April 14, 2004, Greene Circuit Court Judge, David K. Johnson, a thirty-year veteran of the bench, granted David summary judgment, denied Jacobs' motion for summary judgment, and ordered Jacobs to terminate David's Policies within twenty (20) days.

Jacobs filed an interlocutory appeal on May 3, 2004. On June 21, 2004, the trial court issued an order staying Jacobs' termination of David's Policies, and for Jacobs to deliver David's Policies to the Clerk of the Court to be held in trust pending the appeal, and until other matters in the case were litigated.

On appeal, Jacobs made false statements of material fact in his appellant briefs; such as David sold his AMT shares to Jacobs, and Section 6 of the Purchase Agreement was applicable to the Sale, when documentation affirms otherwise. Therefore, Petitioner's counsel filed a motion for leave to file a motion to strike Jacobs' false statements, which the Court of Appeals denied. Because, however, the Petitioner's motion alerted the court that genuine issues of disputed fact existed, coupled with the

serious public policy issues arising from Jacobs' "investment" in David's untimely death, the court had a duty to not render a decision, and to, instead, either uphold the trial court's summary judgment to David, or remand the case for the genuine issues of material fact to be resolved at the trial level. The Court of Appeals chose to re-litigate the case, and then reversed summary judgment to David based upon Jacobs' false statements, which are quoted throughout the Court of Appeals' published opinion as the reasons for the court's decision.

On June 2, 2006, Jacobs filed a second motion for summary judgment. The Petitioner filed a response and a cross-motion for summary judgment on October 3, 2006. Counsel for Petitioner included a designation of material issues of fact precluding summary judgment to Jacobs, which included corrections of the false statements Jacobs made in the 2004 appeal. Nevertheless, on January 31, 2007, the trial court granted summary judgment to Jacobs by holding that an insurable interest is only necessary at the inception of a life insurance policy. The trial court relied upon Indiana Code § 27-1-12-17.1, which governs corporation's acquisition of life insurance policies on employees and shareholders, and is not applicable to cases involving a cross-purchase agreement solely between two business partners, such as in the instant case.

Of significance is that the trial court would not consider the factual applicability of the express terms of the Purchase Agreement, due to the Court of Appeals' erroneous 2005 published opinion. In addition, the trial court misinterpreted Indiana Code § 27-8-1-6, and further mistakenly held that there were "no genuine issues of material fact," when

Petitioner's cross-motion for summary judgment designated material issues of fact precluding summary judgment to Jacobs, under Indiana Trial Rule 56(c).

On appeal, the Court of Appeals correctly ruled that the trial court erred in relying on Indiana Code § 27-1-12-17.1. However, the court disregarded the mandatory dispositive authority of Indiana Code § 27-8-1-6, and did not apply applicable precedents, or consider centuries of law, public policy and this Court's decisions against wagering on human life for profit. Instead, the Court of Appeals reapplied Jacobs' same false material facts from its erroneous opinion in the 2004 appeal, and misinterpreted and misapplied *Farra v. Braman,* 171 Ind. 529, 86 N.E. 843 (1909), to uphold the trial court's judgment, which, as shown earlier, is not applicable.

The Petitioner proceeded *Pro Se* in seeking transfer to the Indiana Supreme Court; whereupon, Petitioner discovered that Jacobs' counsel had misrepresented the *Amicus Curia,* who had filed an *Amicus Brief* in support of Jacobs' position in the 2004 and 2007 appeals, and reiterated Jacobs' false statements of fact.

Petitioner filed a motion to strike the *Amicus Curie* and *Amicus Brief* with supporting evidence, and a request for remedial relief as a result of the prejudiced suffered by Jacobs' continual false material issues of fact, and the *Amicus Curie* reiterating the same in both appeals. The Petitioner further requested oral argument be granted to ensure Petitioner was afforded due process in having an opportunity to correct Jacobs' false statements. On Friday, May 2, 2008, Petitioner received notice in

an envelope postmarked May 1, 2008, that on April 29, 2008, the Petition To Transfer had been denied 3-2, along with Petitioner's motion to strike and prayer for remedial relief.

The following Monday, May 5, 2008, at approximately 8:00 A.M., Petitioner immediately filed a notice with the Court of Appeals and the Indiana Supreme Court that a Petition for a *Writ of Certiorari* would be filed. Following filing the notices, Petitioner met with counsel to file a notice with the trial court to ensure the stay of David's Policies remained in effect, while pursuing a petition for writ of certiorari from this Court.

When counsel called the Clerk of the Greene Circuit Court, to advise that the motion to continue the stay of David's Policies would be filed, it was learned for the first time, that, without prior notice to the Petitioner or her counsel, on Friday, May 2, 2008, the same day Petitioner received the Indiana Supreme Court's transfer denial notice, Jacobs' counsel personally filed a "Motion to Lift Stay and Order Clerk to Return Policies" with an Order for the same; whereupon, Judge Erick Allen affixed his signature, and Jacobs' counsel immediately hand delivered the Order to the Clerk, who relinquished David's Policies to Jacobs' counsel.

Subsequent motions requesting the trial court to order Jacobs to return David's Policies to the Clerk to be held in trust pending the outcome of this Petition were unsuccessful.

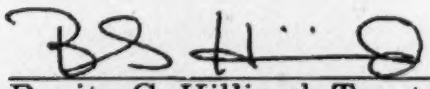
This Court held in 1967 that it ". . . cannot leave to the States the formulation of the authoritative ... remedies designed to protect people from infractions by the States of federally guaranteed rights."

Chapman v. California, 386 U.S. 18, 22 (1967). The lower courts' misapplication of facts and errors of law, denial of due process, and violations of the constitutional and civil rights set forth in this Petition, urgently call for an imperative exercise of this Court's immediate supervisory powers to repair the irreparable harm suffered.

CONCLUSION

For the reasons set forth above, this *Petition for Writ of Certiorari* is critically warranted. Petitioner respectfully requests and prays this Court grants this Petition.

Respectfully submitted,



Bonita G. Hilliard, Trustee
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